



## U. S. Fish and Wildlife Service

# Emergency Designation of a Manatee Protection Area in Florida

### Background

Manatees are a federally protected species under both the Endangered Species Act and Marine Mammal Protection Act. Currently, collisions with watercraft probably constitute the greatest human-caused threat to the species. Historically, these collisions are responsible for about 25 percent of all manatee deaths and about 80 percent of all human-caused mortality in manatees.

In November 2002, a judge in the County Court of the 20<sup>th</sup> Judicial Circuit in and for Lee County, Florida ruled that five State designated manatee protection zones were unconstitutional as the process used to apply the biological data did not support the zones, as established, under the State statutes. The Florida Fish and Wildlife Conservation Commission (FWC) subsequently filed its intent to appeal the judge's ruling and was granted a stay of the State zones ruling.

In December 2003, the Lee County Circuit Court of Appeals refused to hear the State's appeal but granted a continuance. In response to the Court's subsequent denial of a stay, the Service announced that it considered these areas inadequately protected. As a result, the U.S. Army Corps of Engineers denied water access facility permits in these five areas.

### Issue

The Commission has recovered four manatee carcasses in the affected areas this year and three more in close proximity. Subsequent necropsies reveal these animals died of wounds suffered from a boat collision. There have been at least 18 boat-related manatee deaths in these five areas since 1999.

On March 2, the 2<sup>nd</sup> District Court of Appeals in Lakeland, Florida, denied the review of the commission's case to overturn 20<sup>th</sup> Circuit Court's ruling that five state manatee protection zones in Lee County are unconstitutional. The Commission is assessing its appeal options. As a result of the court's decision and based on the best available data, the Service will exercise its authority under the Federal Endangered Species Act and the Marine Mammal Protection Act, and use an emergency designation to establish the Pine Island-Estero Bay Manatee Refuge.

### Status

Each emergency designation is in effect for 120 days. The first such designation expired August 5, 2004. The second designation will expire on December 4, 2004. This new emergency designation will begin December 6, 2004 and remain in effect until April 6, 2005. The additional time is necessary to allow for development of the final rule and because the public hearing was rescheduled due to three hurricanes affecting this region of peninsular Florida.

These Federal protection areas correspond exactly to the previous State designations in these areas. As part of the process, the Service published in the *Federal Register* on August 6, 2004, a proposed rule to make these designations a permanent manatee refuge. The proposed rule included notice of a public comment period which has been extended through February 2, 2005, as well a public hearing which has been rescheduled for January 12, 2005, in Fort Myers, Florida.

### Questions?

The regulation and additional information on this action is available on the South Florida Ecological Service's web site at [vero beach.fws.gov](http://vero beach.fws.gov), or may be requested by writing via e-mail to [vero beach@fws.gov](mailto:vero beach@fws.gov); by faxing your request to (772) 562-4288; or by letter to USFWS, Attn: MPA Emergency Designation, 1339 20<sup>th</sup> Street, Vero Beach, FL 32960. If you have specific questions or need special assistance, please contact the South Florida Ecological Services Office at (772) 562-3909.